IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12564 of 1993

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASIKLAL BHAGWANILAL - Petitioner(s)
Versus
MAVJIBHAI N KHAMBHALIYA & 1 - Respondent(s)

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Appearance :
MR DD VYAS for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR YOGESH S LAKHANI for Respondent(s) : 1,
MS TRUSHA PATEL, ASST.GOVERNMENT PLEADER for Respondent(s) : 2,
LAW OFFICER BRANCH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 29/11/2007

ORAL JUDGMENT

1. In view of the objection raised by Ms. Trusha Patel, learned AGP, against impleading the respondent No.2 as party to the petition, Learned advocate appearing for the petitioner

seeks permission to delete the respondent No.2. Permission granted. Respondent No.2 be deleted.

2. In this petition under Article 227 of the Constitution, the petitioner has inter alia prayed that, “this Hon'ble Court will be pleased to : (A) issue a writ of certiorari or any other appropriate writ, direction or order, directing the learned Civil Judge (JD), Botad, the respondent No. herein, to pronounce the judgment which has been kept ready by his predecessor Mr. Bhatt, in view of the provisions of Order 20 Rule 2 of the Civil Procedure Code; (B) pending hearing and final disposal of this petition, the Hon'ble Court will be pleased to stay the further proceedings of Regular Civil Suit No.33/89 pending in the Court of the learned Civil Judge (JD), Botad; (C) pass such other and further order as the Hon'ble Court deems fit and proper.”

3. The said relief has been prayed for in the background of the following facts:

3.1 After hearing the parties, the learned Civil Judge (JD), Botad had kept the judgment in Regular Civil Suit No.33/1989 ready for the purpose of pronouncement, however, before the judgment could be pronounced, the respondent in present petition filed M.C.A. No. 83 of 1992 before the learned District Judge, Bhavnagar praying, inter alia, for transfer of the said R.C.S.No.33 of 1989.

3.2 In the said M.C.A., it is submitted by the petitioner, that, the learned District Judge had passed an order dated 28th August, 1992 directing the learned trial Court not to pronounce the judgment. In that view of the matter, the judgment which was kept ready and was to be pronounced by the learned Civil Judge (JD), Botad, was not pronounced.

3.3 It is further case of the petitioner that subsequently the said M.C.A.No.83 of 1992 was dismissed for non-prosecution by the Court by an

order dated 6th September, 1993. A copy of the said order is produced by the petitioner on record at page – 18. The learned advocate for the respondent does not dispute the said factual aspects, i.e. the said M.C.A.No.83 of 1992 was dismissed for non-prosecution by the Court by an order dated 6th September, 1993.

3.4 It is, in the aforesaid background of facts, that the petitioner preferred present petition praying for the reliefs incorporated in para – 10(a) of the petition inter alia praying that the learned Civil Judge (JD), Boatad be directed to pronounce the judgment in R.C.S.No.33/1989.

4. Mr. Vyas, learned advocate appearing for the petitioner has submitted that in view of the provisions contained under Order 20 Rule 2 of the Civil Procedure Code, the judgment is required to be pronounced. The Order 20 Rule 2 of the Civil Procedure Code reads as under :-

"2. Power to pronounce judgment written

by judge's predecessor. - [A judge shall pronounce] a judgment written, but not pronounced, by his predecessor."

Mr. Vyas, learned advocate has placed reliance on the said provision in light of the fact that subsequently the learned Civil Judge (JD), Botad, who had prepared the judgment and who was about to pronounce the same on 5th September, 1992, got transferred. Therefore, in his submission it has become necessary that the judgment, which was prepared by the learned Civil Judge (JD), Botad at the relevant time and was to be pronounced on 5th September, 1992, may now be pronounced.

5. Mr. Vyas, learned advocate further submits that since the M.C.A.No.83 of 1992 came to be dismissed for non-prosecution, the injunction granted by the learned District Judge, Bhavnagar at the relevant time, restraining the learned trial Court from pronouncing the judgment also does not survive and, therefore, there is no reason for not pronouncing the said judgment.

6. As noted above, the learned advocate for the respondent has not controverted the factual aspects that M.C.A.No. 83 of 1992 has been dismissed for non-prosecution and that any application either for restoration of the said M.C.A.No.83 of 1992 or any fresh application for same or similar relief, has not been moved.

7. On the contrary, Mr. J.H.Mehta, learned advocate appearing for Mr. Lakhani, learned advocate for the respondent has stated, on instructions, that pursuant to the transfer of the learned Civil Judge (JD), Botad, the grievance of the respondent now does not survive and therefore, even the respondents do not have any objection if the concerned Court is directed to pronounce the judgment.

8. The provision under Order 20 Rule 2 of the Civil Procedure Code provides, inter alia, that if the judgment is written by the predecessor but is not pronounced, then, the same can be pronounced

by the Judge in Office. The said provision would be attracted and applicable in case when the judgment, though written, could not be pronounced. In present case it is an undisputed position that the judgment was written by the learned Civil Judge (JD), Botad and in all likelihood it was to be pronounced on 5.9.1992, however, before the said judgment could be pronounced, the learned District Judge passed the order directing the learned trial Court to not to pronounce the judgment and then the learned Civil Judge (JD), Botad, was transferred. Such eventuality are bound to arise and it is for taking care of such and similar situations that provision under Order -20 Rule-2 is incorporated. One of the eventuality would be transfer of the learned Judge, and to exclude such eventuality from purview of said provision would amount to curtailing the scope and ambit of said provision. The said provision takes in its purview event of transfer of learned Judge also and it empowers the successor in office to

pronounce the judgment written by his predecessor.

9. Almost 15 years have passed since the date on which the judgment was likely to be pronounced. Thus, even otherwise, it is required that the stalemate must come to an end, and since the aggrieved party will have remedy available against the said judgment, there is no good reason for not granting the relief prayed for by the petitioner in present petition. No doubt, the situation would be different if the MCA No.83/1992 and/or the cause of said MCA No.93/1992 still survived, and the respondent was seriously pursuing said application. However, since the said application is already dismissed for non-prosecution and has then not been pursued either by reviving it or by filing fresh application, it follows that the respondent has abandoned the cause and grievance in said application. Further, the respondent's advocate has today even declared that their grievance does not survive and they have no

objection, if this petition is allowed.

10. Thus, so as to ensure the proceedings in connection with R.C.S.No.33 of 1989 are not further delayed, it is necessary and also in the interest of justice that the direction for pronouncement of the judgment is granted, as prayed for.

11. The learned Judge before whom the proceedings of R.C.S.No.33 of 1989 are presently pending may proceed further after fixing a date for pronouncing the judgment and after giving due notice to all parties, or their pleaders, and after following due procedure to pronounce the judgment as early as possible and in any case on or before 31st December, 2007.

12. With the aforesaid direction, petition is allowed. Rule is made absolute. No order as to costs. Direct Service is permitted. The writ to go forthwith through Office also.

[K.M.Thaker, J.]

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